

**IN THE UNITED STATES BANKRUPTCY COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA**

IN RE:)
 Virgie Smith)
) Case No. 07-11280-BH
) Chapter 7
 Debtor(s).)

**MOTION FOR ORDER COMPELLING
 TURNOVER OF ESTATE PROPERTY,
COMBINED WITH NOTICE OF TIME TO OBJECT**

G. David Bryant (the "Trustee") moves pursuant to 11 U.S.C. § 542(a) for an order compelling Virgie Smith (the "Debtor") to immediately turn over \$6,323.46 in state and federal tax refunds for the years 2006 and 2007. In support of this Motion, the Trustee states:

1. On April 23, 2007, the Debtor filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code.
2. On April 23, 2007, pursuant to 11 U.S.C. § 701, the Trustee was duly appointed to this bankruptcy and has served as the Trustee since his appointment.
3. On July 24, 2007, pursuant to 11 U.S.C. § 341, the first meeting of creditors was conducted and concluded.
4. Pursuant to 11 U.S.C. § 542(a), any refund due to the Debtor is property of the bankruptcy estate and subject to turnover because it is of consequential value and benefit to the estate and may be used by the Trustee under 11 U.S.C. § 363.
5. Copies of the Debtor's 2006 income tax returns indicated a refund of \$5,740.00 (\$4,938.00, federal and \$802.00, state). To date, the Debtor has paid \$790.00 of that refund into the bankruptcy estate bringing the remaining balance due to the bankruptcy estate to \$4,950.00.

6. Copies of the Debtor's 2007 income tax returns indicated a refund of \$4820.00 (\$4,423.00, federal and \$397.00, state). To date, the Debtor has not paid any portion of that into the bankruptcy estate.

7. In determining the amount due to the bankruptcy estate from the 2007 returns, \$344.00 is deducted for earned income credits claimed on federal (\$328.00) and state (\$16.00) bringing possible funds due to the estate to \$4,476.00.

8. Further, because the Debtor filed bankruptcy in 2007, only a percentage of 2007 tax refunds are due to the bankruptcy estate. Beginning with January 1, 2007, 112 days elapsed prior to April 23, 2007, the date of filing, which is equivalent to 30.68% of the year. So, 30.68% of \$4,476.00 due to or received by the Debtor is attributable to that portion of the pre-petition taxable year and therefore, property of the bankruptcy estate. The Debtor owes the bankruptcy estate \$1,373.46 from the 2007 federal and state tax refunds.

9. On March 4, 2008, April, 3, 2008 and July 10, 2008, the Trustee communicated with the Debtor through counsel, James Bentley, by letters demanding turnover of the tax refunds.

10. To date, the Debtor has not complied with the Trustee's demand for turnover of the tax refunds due to the bankruptcy estate.

**NOTICE OF TIME FIXED FOR FILING OBJECTIONS TO THIS MOTION
AND NOTICE OF OPPORTUNITY FOR HEARING**

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. (If you do not have an attorney, you may wish to consult one). If you do not want the court to grant the relief requested, or if you want the court to consider your views, then on or before August 24, 2008, you or your attorney must:

File with the court a written objection explaining your position at:

The United States Bankruptcy Court
Western District of Oklahoma
215 Dean A. McGee Avenue
Oklahoma City, Oklahoma 73102

If you mail your objection to the court for filing, you must mail it early enough so the court will receive it on or before the date stated above.

You must also mail a copy to:

Amy Cornforth
Kline, Kline, Elliott & Bryant, P.C.
720 NE 63rd Street
Oklahoma City, OK 73105

Objections to this Motion, if any, must be served within 15 days after service of this pleading, plus an additional 3 days because this motion was served by mail. *See* Rule 9013(e) and (f) of the Local Bankruptcy Rules of the United States Bankruptcy Court for the Western District of Oklahoma.

Absent a timely-served objection to this Motion, the Trustee will submit a proposed order to the Court granting the relief requested herein, which will include the Court granting the Trustee an Order For Turnover compelling the Debtor to pay over to the Trustee \$6,323.46 in tax refunds due to the bankruptcy estate.

Further, this Motion commences a contested matter governed by Rule 9014, F.R.Bankr.P., which includes assessment of costs under Rule 7054, F.R.Bankr.P., if applicable.

WHEREFORE, G. David Bryant, Chapter 7 Trustee, prays for an order compelling Virgie Smith to turn over tax refunds due to the bankruptcy estate in the amount of \$4,950.00 for 2006 and \$1,373.46 for 2007, and that the Court grant such other relief as may be just and equitable.

Respectfully submitted,

s/Amy Cornforth

Amy Cornforth, OBA #20657
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Attorneys for G. David Bryant,
Chapter 7 Trustee

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2008, a true and correct copy of the above and foregoing instrument was mailed, with proper postage prepaid thereon, to:

Virgie Smith
1517 NE 47th
Oklahoma City, OK 73111

James Bentley
UAW-GM Legal Services
3901 SE 29th
Del City, OK 73115

Office of U.S. Trustee
4th floor
215 Dean A. McGee
Oklahoma City, OK 73102

s/Amy Cornforth

Amy Cornforth, OBA# 20657